



DAF #8

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PTO/SB/61 (09-03)
Approved for use through 07/31/2006. OMB 0651-0031
Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

Docket Number (Optional)

TOMT101

First Named Inventor: TOMLIN, Tom L.

Art Unit: 3632

Application Number: 10/046,948

Examiner: BRANN, DEBORAH M.

Filed: 01/14/2002

Title: Trash Bag Support and Liner

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703)305-9382.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee -- required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
- (4) Adequate showing of the cause of unavoidable delay

1. Petition fee

☒ Small entity - fee \$ 110.00 (37 CFR 1.17(l)) Applicant claims small entity status..
See 37 CFR 1.27.

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(l)).

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of

Response to Office Action dated 10/09/2002 (identify the type of reply):

- ☐ has been filed previously on _____
☒ is enclosed herewith.

11/21/2003 AWONDAF1 00000103 10046948

01 FC:1452

110.00 OP

B. The issue fee of \$ _____

- ☐ has been paid previously on _____
☐ is enclosed herewith.

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NOV 21 2003

OFFICE OF PETITIONS

(Page 1 of 3)

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing the burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450,

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

Docket Number (Optional)

TOMT101

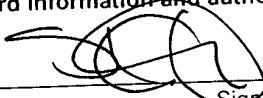
3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ a small entity of \$ _____
er than a small entity) disclaiming the required period of time enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorize on PTO-2038.

11/14/03
Date


Signature

(208) 345-1122
Telephone Number:

STEPHEN M. NIPPER
Typed or printed name

46260
Registration Number, if applicable

P.O. Box 877
Address

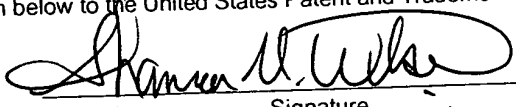
Boise, Idaho 83702
Address

Enclosures: ☒ Fee Payment☒ Reply☐ Terminal Disclaimer Form☒ Additional sheets containing statements establishing unavoidable delay☐ _____**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

- ☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450
- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

11/17/03
Date


Signature
Shannon H. Wilson
Typed or printed name of person signing certificate

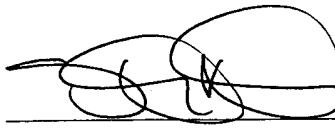
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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

11/14/03
Date


Signature

46260
Registration Number, if applicable

STEPHEN M. NIPPER
Typed or printed name

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply)

Please see the attached statements of the inventor (Tom Tomlin) and his current patent attorney (Stephen M. Nipper).

(Please attach additional sheets if additional space is necessary)



REASONS WHY MY PATENT APPLICATION WENT ABANDONED

On the day I received the denial of my patent application, I called Ken Pedersen, my patent attorney, and asked him if this document said what I thought it said. He responded that in fact my application was denied but we could appeal that decision. I told him then that I wanted to appeal and we ended our conversation. About three months later I called Mr. Pedersen and asked him what was happening with the appeal. He stated then that he was waiting for me to tell him what I wanted to do. He then told me that an appeal at this point would cost me about \$2,000.00 more. Then, I later received a letter from Mr. Pedersen saying that I had chosen to stop work on the project, returning to me whatever money I had in his trust account. Mr. Pedersen never explained to me about abandonment or the process and costs.

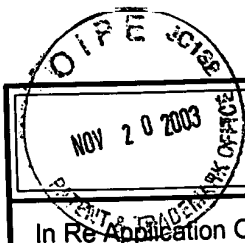
During this whole time frame, my wife was having her right knee replaced and I was undergoing seven rotator cuff surgeries on both shoulders. After me and my wife's medical conditions and financial condition as a result of the medical problems had cleared, I sought the advice of a different patent attorney, Mr. Stephen Nipper. Mr. Nipper looked over all of the previous paperwork originated by Mr. Pedersen and explained to me the consequences of letting my application go abandoned. Until then, I was under the impression that I could resume the process of patenting my product at any time.

My previous attorney, Mr. Pedersen, never once explained to me the appeal or abandonment process. I had no idea that once you started a patent process that it had to be completed to the end in a timely fashion. That to me doesn't seem right, but regardless, I should have been informed of the "rules" before I started playing the game otherwise there is no way to win.

Sincerely,

Tom Tomlin

11/13/03



TRANSMITTAL LETTER
(General - Patent Pending)

Docket No.
TOMT101

In Re Application Of: **TOMLIN**

Serial No.
10/046,948

Filing Date
01/14/2002

Examiner
BRANN

Group Art Unit
3632

Title: **TRASH BAG SUPPORT AND LINER**

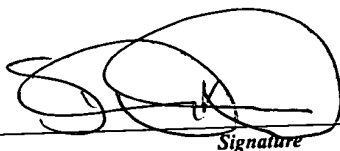
TO THE COMMISSIONER FOR PATENTS:

Transmitted herewith is:

**LETTER FROM STEPHEN M. NIPPER PETITION FOR REVIVAL OF APPLICATION...UNAVOIDABLY...
5 PAGES OF CORRESPONDENCE BETWEEN FORMER COUNSEL AND APPLICANT
DOC. ENTITLED "REASONS WHY MY PATENT APPLICATION WENT ABANDONED"
RESPONSE TO OFFICE ACTION DATED 10/09/02 REVOCATION OF POWER OF ATTORNEY
RETURN RECEIPT POST CARD POWER OF ATTORNEY**

in the above identified application.

- ☐ No additional fee is required.
☒ A check in the amount of \$110.00 is attached.
☐ The Director is hereby authorized to charge and credit Deposit Account No.
as described below.
☐ Charge the amount of
☐ Credit any overpayment.
☐ Charge any additional fee required.


Signature

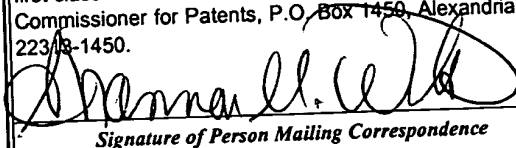
Dated: 11/14/03

**STEPHEN M. NIPPER
DYKAS, SHAVER & NIPPER, LLP
PO BOX 877
BOISE, ID 83701-0877
208-345-1122
REG. NO. 46,260
CUST. NO. 21,658**

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OFFICE OF PETITIONS

CC: CLIENT

I certify that this document and fee is being deposited
on 11/17/03 with the U.S. Postal Service as
first class mail under 37 C.F.R. 1.8 and is addressed to the
Commissioner for Patents, P.O. Box 1450, Alexandria, VA
22318-1450.


Signature of Person Mailing Correspondence

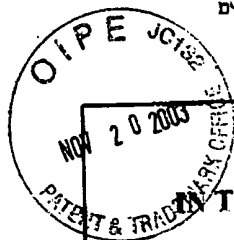
SHANNON M. WILSON

Typed or Printed Name of Person Mailing Correspondence

DYKAS SHAVER NIPPER

208 345 8370

11/14/03 02:00 PM P. 002



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
POWER OF ATTORNEY

Docket No.

TOMT101

Name of Applicant: TOMLIN, TOM
Address of Applicant: 10903 MUSKET STREET
BOISE, IDAHO 83713

Title: TRASH BAG SUPPORT WITH LINER

Serial No., if Any: 10/046,948
Filed: 01/14/2002

TO THE COMMISSIONER FOR PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Honorable Sir:
I hereby appoint:
STEPHEN M. NIPPER

as principal attorneys to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.

Please direct all future correspondence to:

STEPHEN M. NIPPER
DYKAS, SHAVER & NIPPER, LLP
P.O. BOX 877
BOISE, IDAHO 83701
(208)345-1122

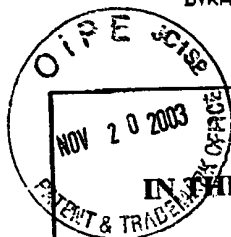
By:

Dated:

DYKAS SHAVER NIPPER

208 345 8370

11/14/03 02:11 PM P. 003



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
REVOCATION OF POWER OF ATTORNEY

Docket No.

TOMT101

Name of Applicant: **TOMLIN, TOM**
Address of Applicant: **10903 MUSKET STREET**
BOISE, IDAHO 83713

Title: **TRASH BAG SUPPORT WITH LINER**

Serial No., if Any: **10/046,948**
Filed: **01/14/2002**

TO THE COMMISSIONER FOR PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Honorable Sir:

I hereby revoke the Power of Attorney given to:

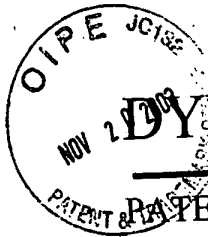
KEN PEDERSEN
BARBARA PEDERSEN

Dated:

11/17/03

By:

Tom Tomlin



DYKAS, SHAVER & NIPPER, LLP

PATENT ♦ TRADEMARK ♦ COPYRIGHT ♦ INTERNATIONAL

FRANK J. DYKAS
Registered Patent Attorney
frank@dykaslaw.com

ROBERT L. SHAVER
Registered Patent Attorney
shaver@dykaslaw.com

STEPHEN M. NIPPER
Registered Patent Attorney
stephen@dykaslaw.com

DEREK H. MAUGHAN
Registered Patent Attorney
maughan@dykaslaw.com

November 14, 2003

Attention: Office of Petitions
Mail Stop Petitions
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Serial Number 10/046,948
TRASH BAG SUPPORT AND LINER
Filed: 01-14-2002
Our File: TOMT101

Dear Commissioner:

My name is Stephen M. Nipper. I am a registered patent attorney who has been hired by the Applicant, Mr. Tomlin, to review his patent application file. It is my opinion, based upon the facts that I know, that Mr. Tomlin's patent application was unavoidably abandoned.

It appears that Mr. Tomlin had a variety of circumstances which came together when the application went abandoned. According to what he has told me, between the ineffective assistance of his prior patent counsel in explaining the patenting process to him and a series of health issues, Mr. Tomlin's application went unavoidably abandoned.

It is my understanding that Mr. Tomlin was charged by his prior patent attorney \$2,600.00 (plus the filing fee) for the preparation and filing of the original 5-pages long provisional application. Then, one year later, Mr. Tomlin was charged \$1,600.00 (plus the filing fee), to write the application's four claims and file the application as a non-provisional patent application (totaling 6-pages long). The provisional application is substantially a duplicate of the nonprovisional application minus the claims.

At the time of receipt of the Office Action, Mr. Tomlin had \$1,030.00 held in his prior patent attorney's trust account. Regardless of this fact, his prior counsel still asked for an additional retainer of \$600.00 before work would begin in preparing a Response. Mr. Tomlin indicated to me that he had thought that he had indicated to his prior counsel to begin preparation and filing of a Response. However, on April 2, 2003, Mr. Tomlin received a letter from his prior counsel indicating that Mr. Tomlin had "chosen to discontinue your current 'Trash Bag Support Liner' project", enclosing therewith a check for the \$1,030.00, which had been held in trust.

THE HOFF BUILDING ♦ 802 West Bannock St., Suite 405 ♦ Boise, Idaho 83702
♦ P.O. Box 877 ♦ Boise, Idaho 83701-0877
♦ (208) 345-1122 ♦ FAX (208) 345-8370 ♦ toll free 1-877-611-1122

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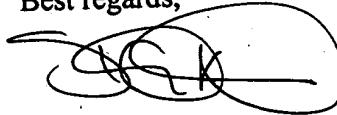
At the time of receipt of his prior counsel's April 2, 2003 letter, Mr. Tomlin and his wife were undergoing a number of medical operations and were suffering financial problems therefrom. As such, Mr. Tomlin felt he was financially, physically, and emotionally unable to further deal with his prior counsel. Upon recovering from his medical issues and discussing his project with a friend, he was referred to my office to see if anything could be done with respect to his application.

It is my opinion, based upon my review of the facts, that there was no possible way that Mr. Tomlin could have timely filed a Response preventing the abandonment of the application.

I have reviewed the application prepared and filed by his prior patent attorney and believe that the claims can be substantially rewritten to overcome the Examiner's rejections based upon the prior art. An amendment accomplishing this is enclosed herewith.

I enclose herewith copies of the correspondence between Mr. Tomlin and his prior patent counsel. If further evidence or proof is necessary, please contact me.

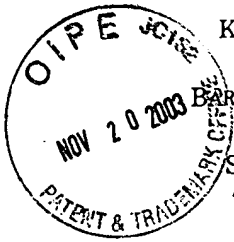
Best regards,

A handwritten signature in black ink, appearing to read "S. Nipper", enclosed within a large, loopy oval shape.

STEPHEN M. NIPPER
Registered Patent Attorney

SMN/smw
Enclosures

PEDERSEN & COMPANY, PLLC



KEN J. PEDERSEN
PATENT ATTORNEY

BARBARA S. PEDERSEN
PATENT AGENT

SCOTT R. CLEERE
ASSOCIATE ATTORNEY

INTELLECTUAL PROPERTY LAW
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1410 N. 28TH STREET (83703)

P. O. BOX 2666

BOISE, IDAHO 83701-2666

T: (208) 343.6355

F: (208) 343.6341

E-MAIL: IP@PEDERSENCO.COM

WEBSITE: WWW.PEDERSENCO.COM

STACEY D. COLEMAN
OFFICE MANAGER

April 2, 2003

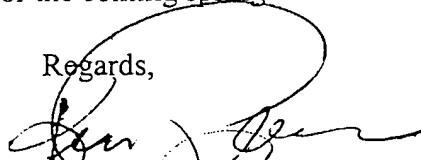
Tom Tomlin
10903 Musket St.
Boise, ID 83713

Dear Tom:

Thank you for choosing Pedersen and Company, PLLC to represent you in your intellectual property matters. We understand that you have chosen to discontinue your current "Trash Bag Support Liner" project, but we look forward to serving you again in the future. Please find enclosed a check in the amount of \$1,030.00 that has been paid from our trust account. As you have chosen not to pursue patent protection for your invention, it will no longer be necessary for us to retain these funds.

In the future, please do not hesitate to contact me in the office with any questions or comments you may have or to discuss new ideas. I can be reached via email at ip@pedersenco.com or by phone at (208)343-6355. Thank you again for this opportunity to work with you. Best wishes for the coming spring.

Regards,



Ken J. Pedersen

enl -

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OFFICE OF PETITIONS

PEDERSEN & COMPANY, PLLC

KEN J. PEDERSEN
PATENT ATTORNEY

BARBARA S. PEDERSEN
PATENT AGENT

SCOTT R. CLEERE
ASSOCIATE ATTORNEY

INTELLECTUAL PROPERTY LAW
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1410 N. 28TH STREET (83703)

P. O. BOX 2666

BOISE, IDAHO 83701-2666

T: (208) 343.6355

F: (208) 343.6341

E-MAIL: IP@PEDERSENCO.COM

WEBSITE: WWW.PEDERSENCO.COM

STACEY D. COLEMAN
OFFICE MANAGER

December 9, 2002



Tom Tomlin
10903 Musket Street
Boise, ID 83713

Re: Patent Application "Trash Bag Support and Liner"
Response to Examiner's Action
Our File No. 2785

Dear Tom:

Please find enclosed a copy of an Examiner's Action sent by the Patent and Trademark Office regarding your subject application.

A Response to this Examiner's Action must be filed by February 9, 2003 (with a one-month extension fee of \$55, which I will pay, because this letter has been delayed in coming to you). This due date may be extended, up to April 9, 2003, upon payment of the appropriate extension fee to the Patent Office (currently, 2 months - \$200.00; 3 months - \$460.00). If no Response is filed on or before April 9, 2003, the patent application will become abandoned.

It is common for the Examiner to reject claims in a patent application in an Examiner's Action. In your Response to an Examiner's Action, you have the right to make amendments to the claims of the patent application and to make arguments regarding the novelty and unobviousness of your invention compared to the "prior art" references and patents cited by the Examiner. Often, even after rejection on an Examiner's Action, we are successful in obtaining an issued patent for inventors by making these amendments and arguments. Therefore, I recommend that you review the enclosed references cited by the Examiner to determine differences between your invention and the apparatus or methods disclosed in the cited references, in order to formulate a strategy for responding the Examiner's Action.

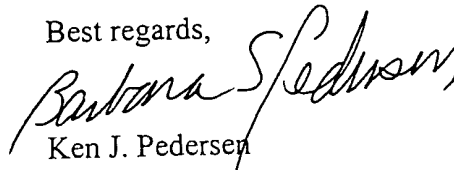
2785.Office Action Letter

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Tom Tomlin
December 9, 2002
Page 2

My fee for preparing and filing the Response will be at our hourly rate of \$160.00-\$200.00 per hour, and we estimate approximately \$600.00 - \$800.00. If you want to proceed, please send a retainer of \$600 in advance of us preparing the Response. Please call Ken to discuss this Examiner's Action. Thank you.

Best regards,



Ken J. Pedersen

Barbara S. Pedersen

BSP:cfo

Enclosures

PEDERSEN & COMPANY, PLLC

KEN J. PEDERSEN
PATENT ATTORNEY

BARBARA S. PEDERSEN
PATENT AGENT

SCOTT R. CLEERE
ASSOCIATE ATTORNEY

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P. O. BOX 2666

BOISE, IDAHO 83701-2666

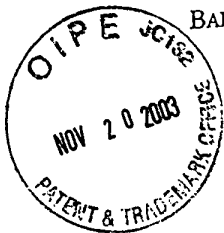
T: (208) 343.6355

F: (208) 343.6341

E-MAIL: IP@PEDERSENCO.COM
WEBSITE: WWW.PEDERSENCO.COM

STACEY D. COLEMAN
OFFICE MANAGER

December 9, 2002



FILE COPY

Tom Tomlin
10903 Musket Street
Boise, ID 83713

Re: Patent Application "Trash Bag Support and Liner"
Response to Examiner's Action
Our File No. 2785

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REMINDER

1-8-03

2785.Office Action Letter

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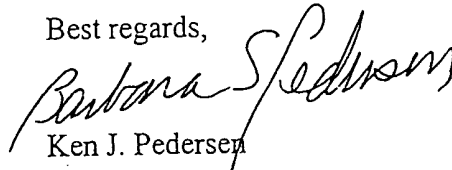
OFFICE OF PETITIONS

As you may recall, we have \$1,030.00 in trust. Therefore there is no need to send a retainer for the preparation of the Response to the Examiner's Action. However, we do need your comments with regard to the Examiner's Action sent to you on December 9. We look forward to receiving your comments as soon as possible.

Tom Tomlin
December 9, 2002
Page 2

My fee for preparing and filing the Response will be at our hourly rate of \$160.00-\$200.00 per hour, and we estimate approximately \$600.00 - \$800.00. If you want to proceed, please send a retainer of \$600 in advance of us preparing the Response. Please call Ken to discuss this Examiner's Action. Thank you.

Best regards,



Ken J. Pedersen

Barbara S. Pedersen

BSP:cfo

Enclosures